REMARKS

Applicant respectfully requests favorable reconsideration of this application, as amended.

Applicant notes with appreciation the acceptance of the replacement drawings filed on June 4th. *See*, Office Action Summary.

Claims 25, 26 and 31 were objected to because of informalities (Page 2). Claims 21, 22, 25, 26, 30 and 31 were rejected under 35 U.S.C. § 112, 2nd paragraph, as being indefinite (Pages 2–4). Claims 21–24 and 28–31 were rejected under 35 U.S.C. § 102(b) as being anticipated by Saino (U.S. 5,380,053) (Pages 4–6). Claims 22 and 25–27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thomas (US 4,867,496) in view of Saino (Pages 6–8).

In the interests of securing an expedited Notice of Allowance, and without acceding to the rejections, Claims 21–31 have been canceled without prejudice, and new Claims 32–37, directed to a door opener comprising a housing with an armature and an intumescent material, have been added. Support for these new claims may be found, for example, in the Specification at Paragraphs 0008, 0011, 0030–0032, etc.; FIGS. 1, 2; no new matter has been added. Applicant respectfully submits that the claim objections and rejections have been mooted by the cancelation of Claims 21–31, and, further, that new Claims 32–37 are allowable over the references of record.

In the interests of expediting prosecution, Applicant offers the following observations on Saino and Thomas, the prior art references cited in the Office Action.

Saino does not relate to a door opener but, instead, to a lock mechanism that is supposed to lock a door in a closed position in the event of fire. *See*, e.g., Col. 2:56–63. Importantly, Saino fails to disclose a door opener with a housing, an armature and intumescent material that fills up the free space of the housing in the area of the armature when the intumescent material expansion temperature has been reached, as recited by Claim 32. Furthermore, while Thomas discloses an electrically operable strike, Thomas fails to disclose a door opener with intumescent material, as recognized by the Office Action (Page 7). Consequently, neither Saino nor Thomas, taken singly, teaches or suggests all of the features recited by Claims 32–37.

With respect to the combination of the teachings of these references, the Office Action opines that "Saino teaches the use of an intumescent material 47 within a latching device. Since replacing the material that expands as a result of hear [sic], disclosed by Thomas, with an intumescent material [that] also expands would still allow the latch position to be fixed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the material disclosed by Thomas with an intumescent material since both materials expand when subjected to heat" (Page 7). Applicant disagrees, and submits that a simple replacement of Thomas's metal ball with intumescent material would not lead to the claimed invention.

Thomas discloses the use of thermally-responsive detent means to transitionally lock the locking member in a locking position if a certain temperature is exceeded. *See*, e.g., Col. 4:60 to Col. 6:11. For this reason, Thomas suggests the use of materials that expand and contract depending on the temperature. However, intumescent materials only expand after the temperature has reached a certain threshold value, and intumescent materials remain in this expanded condition even if the temperature decreases again. Advantageously, the use of a door opener with intumescent material is safer due to the fact that the door opener has to be replaced by a new door opener once the intumescent material has expanded. Furthermore, the integration of intumescent material in a door opener is easier to accomplish than Thomas's more complicated construction which depends on certain physical expansion properties of the metals used for the ball 44 , the spring 46, and the opening 47. Furthermore, intumescent material expands into the free space in any direction, while Thomas's construction is only effective in one direction, which depends on the positioning the opening and the ball. Additionally, the expanding intumescent material is effective irrespective of the position of the armature of the door opener. In contrast, Thomas's mechanism is only effective if the ball is located outside of the opening. Moreover, Applicant questions Thomas's disclosure because Thomas states that, upon heating, "the diameter of the opening decreases and the diameter of the ball increases'" (Col. 5:19–22). However, Applicant believes that because all metals comprise *positive* temperature expansion coefficients, it seems unlikely that the diameter of the opening *decreases* upon heating.

Saino discloses a locking mechanism that fulfills a function that is completely opposite to the function fulfilled by the claimed door opener. Furthermore, while Saino's intumescent material can move a blocking element into a certain position, the claimed intumescent material

is used to fill up a free space, which is at odds with the movement of elements. Applicant submits that if one skilled in the art attempts to apply Saino's construction to Thomas's strike assembly, and, more particularly, to Thomas's opening 47 (FIG. 8), the expanding intumescent material would not fill up the free space of the door opener housing. Instead, the intumescent material would move rod member 29 into a locking position that could block the blocking element in a single position. Even so, this hypothetical combination still differs from the claimed invention. Moreover, there is simply no suggestion, in either reference, that Thomas's ball can be replaced by Saino's intumescent material, as alleged by the Office Action. Thomas's ball is a mechanical blocking element, whereas the claimed intumescent material expands into free space, and thus fixes elements in their current position.

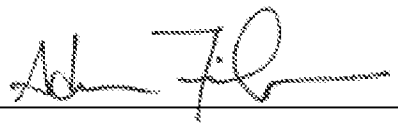
Accordingly, Applicant submits that Claim 32 is allowable over the references of record. Furthermore, Claims 33–37, depending from Claim 32, are also allowable, at least for the reasons discussed above. Applicant also submits that the cited references fail to teach or suggest many of the features recited by the dependent claims, and, consequently, that these claims are independently allowable.

In view of the foregoing amendments and remarks, Applicant respectfully submits that this application is in condition for allowance and should now be passed to issue. A Notice of Allowance is respectfully solicited. If any extension of time is required in connection with the filing of this paper and has not been requested separately, such extension is hereby requested.

The Commissioner is hereby authorized to charge any fees and to credit any overpayments that may be required by this paper under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account No. 50-2036.

Respectfully submitted,

Baker & Hostetler LLP

December 20, 2010 By: 

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